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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2004 63921

ESTRELITA BUMACOD
12618 Knights Bridge Place
Bakersfield, CA 93312

A C C U S A T I O N

Physical Therapist License No. PT 12164

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about June 8, 1984, the Physical Therapy Board of California issued Physical Therapist License Number PT 12164 to ESTRELITA BUMACOD (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of

1 California (Board), Department of Consumer Affairs, under the authority of the following laws.
2 All section references are to the Business and Professions Code (Code) unless otherwise
3 indicated.

4 4. Section 2609 of the Code states:

5 “The board shall issue, suspend, and revoke licenses and approvals to practice
6 physical therapy as provided in this chapter.”

7 5. Section 2660 of the Code states:

8 “The board may, after the conduct of appropriate proceedings under the
9 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
10 probationary conditions upon any license, certificate, or approval issued under this chapter for
11 unprofessional conduct that includes, but is not limited to, one or any combination of the
12 following causes:

13 “(a) Advertising in violation of Section 17500.

14 “(b) Fraud in the procurement of any license under this chapter.

15 “(c) Procuring or aiding or offering to procure or aid in criminal abortion.

16 “(d) Conviction of a crime which substantially relates to the
17 qualifications, functions, or duties of a physical therapist or physical therapy
18 assistant. The record of conviction or a certified copy thereof shall be conclusive
19 evidence of that conviction.

20 “(e) Impersonating or acting as a proxy for an applicant in any
21 examination given under this chapter.

22 “(f) Habitual intemperance.

23 “(g) Addiction to the excessive use of any habit-forming drug.

24 “(h) Gross negligence in his or her practice as a physical therapist or
25 physical therapy assistant.

26 “(i) Conviction of a violation of any of the provisions of this chapter or of
27 the State Medical Practice Act, or violating, or attempting to violate, directly or
28 indirectly, or assisting in or abetting the violating of, or conspiring to violate any

1 provision or term of this chapter or of the State Medical Practice Act.

2 “(j) The aiding or abetting of any person to violate this chapter or any
3 regulations duly adopted under this chapter.

4 “(k) The aiding or abetting of any person to engage in the unlawful
5 practice of physical therapy.

6 “(l) The commission of any fraudulent, dishonest, or corrupt act which is
7 substantially related to the qualifications, functions, or duties of a physical
8 therapist or physical therapy assistant.

9 “(m) Except for good cause, the knowing failure to protect patients by
10 failing to follow infection control guidelines of the board, thereby risking
11 transmission of blood-borne infectious diseases from licensee to patient, from
12 patient to patient, and from patient to licensee. In administering this subdivision,
13 the board shall consider referencing the standards, regulations, and guidelines of
14 the State Department of Health Services developed pursuant to Section 1250.11 of
15 the Health and Safety Code and the standards, regulations, and guidelines
16 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1
17 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing
18 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health
19 care settings. As necessary, the board shall consult with the Medical Board of
20 California, the California Board of Podiatric Medicine, the Board of Dental
21 Examiners of California, the Board of Registered Nursing, and the Board of
22 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
23 consistency in the implementation of this subdivision.

24 “The board shall seek to ensure that licensees are informed of the
25 responsibility of licensees and others to follow infection control guidelines, and of
26 the most recent scientifically recognized safeguards for minimizing the risk of
27 transmission of blood-borne infectious diseases.

28 “(n) The commission of verbal abuse or sexual harassment.”

1 6. Section 2630 of the Code states:

2 “It is unlawful for any person or persons to practice, or offer to practice, physical
3 therapy in this state for compensation received or expected, or to hold himself or herself out as a
4 physical therapist, unless at the time of so doing the person holds a valid, unexpired, and
5 unrevoked license issued under this chapter.

6 “Nothing in this section shall restrict the activities authorized by their licenses on
7 the part of any persons licensed under this code or any initiative act, or the activities authorized
8 to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7
9 (commencing with Section 3500).

10 “A physical therapist licensed pursuant to this chapter may utilized the services of
11 one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of
12 physical therapy. "Patient-related task" means a physical therapy service rendered directly to the
13 patient by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task
14 related to observation of the patient, transport of the patient, physical support only during gait or
15 transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all
16 times be under the orders, direction, and immediate supervision of the physical therapist.
17 Nothing in this section shall authorize an aide to independently perform physical therapy or any
18 physical therapy procedure. The board shall adopt regulations that set forth the standards and
19 requirements for the orders, direction, and immediate supervision of an aide by a physical
20 therapist. The physical therapist shall provide continuous and immediate supervision of the aide.
21 The physical therapist shall be in the same facility as, and in proximity to, the location where the
22 aide is performing patient-related tasks, and shall be readily available at all times to provide
23 advice or instruction to the aide. When patient-related tasks are provided to a patient by an aide,
24 the supervising physical therapist shall, at some point during the treatment day, provide direct
25 service to the patient as treatment for the patient's condition, or to further evaluate and monitor
26 the patient's progress, and shall correspondingly document the patient's record.

27 “The administration of massage, external baths, or normal exercise not a part of a
28 physical therapy treatment shall not be prohibited by this section.”

1 7. Section 2661.5 of the Code states:

2 “(a) In any order issued in resolution of a disciplinary proceeding before
3 the board, the board may request the administrative law judge to direct any
4 licensee found guilty of unprofessional conduct to pay to the board a sum not to
5 exceed the actual and reasonable costs of the investigation and prosecution of the
6 case.

7 “(b) The costs to be assessed shall be fixed by the administrative law
8 judge and shall not in any event be increased by the board. When the board does
9 not adopt a proposed decision and remands the case to an administrative law
10 judge, the administrative law judge shall not increase the amount of the assessed
11 costs specified in the proposed decision.

12 “(c) When the payment directed in an order for payment of costs is not
13 made by the licensee, the board may enforce the order of payment by bringing an
14 action in any appropriate court. This right of enforcement shall be in addition to
15 any other rights the board may have as to any licensee directed to pay costs.

16 “(d) In any judicial action for the recovery of costs, proof of the board's
17 decision shall be conclusive proof of the validity of the order of payment and the
18 terms for payment.

19 “(e) (1) Except as provided in paragraph (2), the board shall not renew or
20 reinstate the license or approval of any person who has failed to pay all of the
21 costs ordered under this section.

22 “(2) Notwithstanding paragraph (1), the board may, in its discretion,
23 conditionally renew or reinstate for a maximum of one year the license or
24 approval of any person who demonstrates financial hardship and who enters into a
25 formal agreement with the board to reimburse the board within that one year
26 period for those unpaid costs.

27 “(f) All costs recovered under this section shall be deposited in the
28 Physical Therapy Fund as a reimbursement in either the fiscal year in which the

1 costs are actually recovered or the previous fiscal year, as the board may direct.”

2 8. California Code of Regulations, title 16, section 1399, states:

3 “A physical therapy aide is an unlicensed person who assists a physical therapist
4 and may be utilized by a physical therapist in his or her practice by performing nonpatient related
5 tasks, or by performing patient related tasks.

6 “(a) As used in these regulations:

7 “(1) A "patient related task" means a physical therapy service rendered directly to
8 the patient by an aide, excluding nonpatient related tasks as defined below.

9 “(2) A "nonpatient related task" means a task related to observation of the patient,
10 transport of patients, physical support only during gait or transfer training, housekeeping duties,
11 clerical duties and similar functions.

12 “(b) "Under the orders, direction and immediate supervision" means:

13 “(1) Prior to the initiation of care, the physical therapist shall evaluate every
14 patient prior to the performance of any patient related tasks by the aide. The evaluation shall be
15 documented in the patient's record.

16 “(2) The physical therapist shall formulate and record in the patient's record a
17 treatment program based upon the evaluation and any other information available to the physical
18 therapist, and shall determine those patient related tasks which may be assigned to an aide. The
19 patient's record shall reflect those patient related tasks that were rendered by the aide, including
20 the signature of the aide who performed those tasks.

21 “(3) The physical therapist shall assign only those patient related tasks that can be
22 safely and effectively performed by the aide. The supervising physical therapist shall be
23 responsible at all times for the conduct of the aide while he or she is on duty.

24 “(4) The physical therapist shall provide continuous and immediate supervision of
25 the aide. The physical therapist shall be in the same facility as and in immediate proximity to the
26 location where the aide is performing patient related tasks, and shall be readily available at all
27 times to provide advice or instruction to the aide. When patient related tasks are provided a
28 patient by an aide the supervising physical therapist shall at some point during the treatment day

1 provide direct service to the patient as treatment for the patient's condition or to further evaluate
2 and monitor the patient's progress, and so document in the patient's record.

3 “(5) The physical therapist shall perform periodic re-evaluation of the patient as
4 necessary and make adjustments in the patient's treatment program. The re-evaluation shall be
5 documented in the patient's record.

6 “(6) The supervising physical therapist shall countersign with their first initial and
7 last name, and date all entries in the patient's record, on the same day as patient related tasks were
8 provided by the aide.”

9 FIRST CAUSE FOR DISCIPLINE

10 (Aiding and/or Abetting the Unlawful Practice of Physical Therapy)

11 9. Respondent is subject to disciplinary action under section 2660,
12 subdivision (k), of the Code in that she engaged in unprofessional conduct by aiding and/or
13 abetting the unlawful practice of physical therapy. The circumstances are as follows:

14 10. During the period beginning on or about July 22, 2004 through on or about
15 December 3, 2004 (Employment Period), Respondent was employed as a physical therapist by
16 Valley Medical Partners (VMP), located at 2204 Q Street, #B, Bakersfield, CA 93301.

17 11. During the Employment Period, respondent provided physical therapy to
18 one or more patients at Valley Medical Partners. During the period beginning in September,
19 2004 through October, 2004 (Sole PT Period), Respondent was the only Physical Therapist
20 employed by VMP and worked part-time, generally on Tuesdays and Saturdays.

21 12. Fidel Recio was an employee of VMP during the Employment Period and
22 performed physical therapy five days a week, Monday through Friday. Fidel Recio engaged in
23 the unlicensed practice of physical therapy during the Employment Period by seeing patients on
24 days when no physical therapist was present at VMP. Recio admitted that he regularly treated
25 patients without the presence of a physical therapist at VMP.

26 13. Respondent admitted that during the Sole PT Period she knew that (a)
27 Fidel Recio was an unlicensed physical therapy aide; (b) physical therapy services were being
28 provided at VMP while she was not present at VMP; (c) no one else was signing patient records;

1 and (d) no other physical therapists were working at VMP. Nonetheless, Respondent continued
2 to work part-time at VMP during the Sole PT Period and stated that this was because she was
3 “just trying to help a friend,” and that she did not want the “business to go under.” She said that
4 if she quit, the patients would be without treatment and the other employees would be without
5 jobs.

6 SECOND CAUSE FOR DISCIPLINE

7 (Aiding and/or Abetting a Violation of the Physical Therapy Practice Act)

8 14. Respondent is subject to disciplinary action under section 2660,
9 subdivisions (i) and (j), of the Code in that she engaged in unprofessional conduct by, assisting
10 in, aiding and/or abetting the unlawful practice of physical therapy. The facts and circumstances,
11 set forth in paragraphs 10 through 13 of this Accusation are incorporated herein by reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

- 1. Revoking or suspending Physical Therapist License Number PT 12164, issued to ESTRELITA BUMACOD;
- 2. Ordering ESTRELITA BUMACOD to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: June 27, 2006

Original Signed By:
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant